Willis Electric, Inc. and International Brotherhood of Electrical Workers, Local Union No. 669, AFL-CIO. Case 8-CA-14988

24 April 1984

DECISION AND ORDER

By Chairman Dotson and Members Zimmerman and Dennis

Upon a charge filed 8 July 1981 and an amended charge filed 14 September 1981, in Case 8-CA-14988, by the Union and duly served on the Respondent the General Counsel of the National Labor Relations Board, by the Regional Director for Region 8, issued a complaint and notice of hearing 23 September against the Respondent alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Copies of the charges and complaint were duly served on the parties to this proceeding. The Respondent filed its answer to the complaint 29 September.

Upon a charge filed 20 November, in Case 8-CA-15354, by the Union and duly served on the Respondent, the General Counsel, by the Regional Director for Region 8, 28 January 1982 issued and duly served on the Respondent 2 February 1982 an order consolidating cases, and an amended consolidated complaint and notice of consolidated hearing in Cases 8-CA-14988 and 8-CA-15354, alleging that the Respondent violated Section 8(a)(5) and (1) of the Act. The Respondent duly filed its answer to the amended consolidated complaint.

On 28 July 1982 the Acting Regional Director for Region 8 issued an order severing cases, withdrawing complaint, and dismissing charge and an order designating date, time, and place of hearing, in which he severed Case 8-CA-15354 from Case 8-CA-14988; withdrew the allegations in Case 8-CA-15354, more specifically paragraph 9 and the reference to paragraph 9 in the amended consolidated complaint; and dismissed the charge in Case 8-CA-15354. On 27 September 1982 the Respondent filed an amended answer to the consolidated complaint.

With respect to the unfair labor practices, the amended complaint alleges in substance that the Respondent, 17 May 1979, executed letters of assent authorizing the National Electrical Contractors Association, Western Ohio Chapter (the Association) as its collective-bargaining representative and that since 17 May 1979 the Union has been the representative of the Respondent's employees in the following appropriate unit:

All journeymen, wiremen, apprentices and foremen of members of the National Electrical Contractors Association, Western Ohio Chapter, and of the employers who have authorized this Association to bargain for them, engaged in electrical contracting, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

The amended consolidated complaint further alleges that 1 November 1978 the Union and the Association executed a collective-bargaining agreement covering inside electrical work and 1 November 1979 executed a second collective-bargaining agreement covering residential work and that these agreements remained in full force until 30 November 1981. The amended consolidated complaint alleges that 15 January 1981 the Respondent withdrew recognition from the Union and repudiated its contracts with the Union.²

The Respondent in its amended answer admits certain of the factual allegations outlined above but denies that they constitute unfair labor practices within the meaning of Section 8(a)(1) and (5). Thus, the Respondent denies that it refused to bargain with and recognize the Union but admits, despite the fact that such has not been alleged, that it used nonunion employees without first requesting referrals from the Union in violation of the agreement. The Respondent asserts as an affirmative defense that it failed to request referrals from the Union, as required by the collective-bargaining agreement covering inside work, because of economic necessity in order to avoid paying the rates and benefits required by that collective-bargaining agreement.

On 28 October 1982 the General Counsel filed a Motion for Summary Judgment, and a brief in support, with exhibits attached. The General Counsel contends that, in view of the factual admissions contained in the Respondent's amended answer, the pleadings raise no issues of fact which would require a hearing. He, therefore, moves for summary judgment, and requests that the Board find the allegations of the amended consolidated complaint to be true and issue an appropriate Decision and Order. Subsequently, on 3 November 1982, the Board issued an order transferring the proceeding to the Board and Motion to Show Cause why the

¹ All dates herein are 1981, unless otherwise indicated.

⁸ The 28 July 1982 order severing cases stated that the Respondent effectively and timely withdrew from the multiemployer bargaining group terminating to obligation to bargain on a multiemployer basis. Accordingly, the General Counsel dismissed the charges in Case 8-CA-15354, withdrew that allegation in the complaint, i.e., par. 9 referred to above, and found no violation by the Respondent thereby.

General Counsel's Motion for Summary Judgment should not be granted. In response thereto, the Respondent filed an affidavit in opposition to Motion for Summary Judgment wherein it admits that commencing 15 January 1981 it used a nonunion employee to perform inside (commercial) electrical work in the geographic area covered by the collective-bargaining agreement between the Union and the Association without first requesting a referral from the Union as required under the agreement.3 The Respondent further states that its motive for not requesting such referrals from the Union was an economic necessity as it had a good-faith belief that it could not competitively operate nor competitively bid for contracts unless it avoided paying the wages and benefits required by the collectivebargaining agreement.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Repudiation of the Contracts

As noted more fully above, the Respondent executed letters of assent authorizing the Association to be its collective-bargaining representative, and since 17 May 1978 the Union has represented the Respondent's employees in the appropriate unit described above. On 1 November 1978 the Union and the Association executed a collective-bargaining agreement covering inside electrical work, to remain in effect until 30 November 1981, and on 1 November 1979 the Union and the Association executed a collective-bargaining agreement covering residential work, to remain in effect until 30 November 1981. The Respondent on 15 January 1981 sent a letter to the Union terminating its letter of assent and its collective-bargaining agreements.4 The Respondent admits that after 15 January 1981 it performed outside (commercial) electrical work without first requesting a referral from the Union as required under the agreement. The Respondent contends that it did so out of the economic necessity as it had a good-faith belief that it could not competitively operate or bid for the contracts unless it avoided paying the wages and benefits

³ As stated before, such failure to request a referral has not been alleged to violate the Act, and we make no finding whether or not it would violate the Act had it been alleged.

under the collective-bargaining agreement. The Respondent denies that it violated Section 8(a)(5) and (1) of the Act by repudiating the collective-bargaining agreement.

We find no merit in the Respondent's assertions. It is well established that an employer acts in derogation of its bargaining obligation under Section 8(d) of the Act when, during the life of a collective-bargaining agreement to which it is bound, it unilaterally repudiates terms and conditions of employment contained in the agreement. Morelli Construction Co., 240 NLRB 1190 (1979). It is equally well established that economic necessity is not cognizable as a defense to the unilateral repudiation of a collective-bargaining agreement. Id. We therefore find that the Respondent has not raised any issue which is properly litigable regarding this unfair labor practice allegation. Accordingly, we grant the Motion for Summary Judgment with respect to the Respondent's repudiation to the collective-bargaining agreements.

Withdrawal of Recognition

In his complaint and Motion for Summary Judgment, the General Counsel alleges that the Respondent withdrew recognition of the Union and refused to recognize the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit described above. The Respondent in its answer to the complaint and amended complaint denies that it refused to recognize or that it withdrew recognition from the Union as the representative of its employees. Furthermore, in its various responses herein the Respondent indicates that it recommended requests for referrals in the appropriate unit. In its 3 February 1982 answer to the amended consolidated complaint the Respondent admits that the Union about 17 May 1979 was the exclusive representative of the employees in the unit involved herein but denies the remaining allegations of the complaint. However, in its 27 September 1982 amended answer to the amended consolidated complaint, the Respondent admits the Union was and is the exclusive representative of its employees in the appropriate unit.

As noted above, the Acting Regional Director, by his 28 July 1982 order, withdrew the allegation that the Employer's 15 January 1981 letter terminating its multiemployer bargaining authority violated the Act. However, the General Counsel contends that with this letter the Respondent withdrew recognition from the Union in violation of the Act. Accordingly, as a genuine issue of fact exists as to the Respondent's alleged withdrawal of recognition from the Union, we remand the instant case to the Regional Director for Region 8 for the

^{*} As noted above, the Acting Regional Director, in his 28 July 1982 order severing cases, notes this termination of assent by the Respondent of multiemployer bargaining authority abrogated its obligation to bargain on a multiemployer basis and did not violate the Act. However, notwithstanding the Respondent's timely withdrawal from the multiemployer bargaining unit, the collective-bargaining agreements with the Union could not be and were not thereby voided. The collective-bargaining agreement remained in full force and effect, and the Respondent remained legally bound thereby.

sole purpose of arranging a hearing before an administrative law judge to determine whether the Respondent unlawfully withdrew recognition of the Union and thereby violated Section 8(a)(5) and (1) of the Act.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is an Ohio corporation with its principal office and place of business located in Urbana, Ohio, where it is engaged in electrical contracting. Annually, in the course and conduct of its business, it derives gross revenues in excess of \$50,000 from services which it performs for other enterprises located in the State of Ohio, each of which annually in the course and conduct of its respective business operations receives goods valued in excess of \$50,000 directly from points located outside the State of Ohio.

We find, on the basis of the foregoing, that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Representative Status of the Union

1. The unit

The following employees of the Respondent constitute a unit of employees appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All journeymen, wiremen, apprentices and foremen of members of the National Electrical Contractors Association, Western Ohio Chapter, and of the employers who have authorized this Association to bargain for them, engaged in electrical contracting, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

2. The bargaining history

On 17 May 1979 the Respondent executed letters of assent authorizing the National Electrical Contractors Association, Western Ohio Chapter (the Association), as its collective-bargaining representative. Said Association, an organization of contrac-

tor members, has as one of its purposes, inter alia, to enter into collective-bargaining negotiations with unions such as the International Brotherhood of Electrical Workers, AFL-CIO, whose members are employed by contractor members of the Association, on matters pertaining to wages, hours, and other terms and conditions of employment, and to execute such collective-bargaining agreements by, for, and on behalf of said members of the Association and nonmembers who have given it authorization to so act.

Since 17 May 1979, and continuing to date, the Union has been the exclusive representative of the Respondent's employees in the unit described above, and by virtue of Section 9(a) of the Act has been and is now the exclusive representative of all the employees in said unit for the purpose of collective bargaining with respect to pay, wages, hours of employment, and other terms and conditions of employment.

On 1 November 1978 the Union and the Association executed a collective-bargaining agreement covering inside electrical work, which, by its terms, remains in full force and effect from 1 November 1978 through 30 November 1981. On 1 November 1979 the Union and the Association executed a collective-bargaining agreement covering residential electrical work, which by its terms remains in full force and effect from 1 November 1979 through 30 November 1981.

B. Repudiation of the Contracts

About 15 January 1981 by sending a letter terminating the collective-bargaining agreements with the Union, the Respondent has unilaterally repudiated its contracts with the Union. Accordingly, we find that the Respondent, by the acts and conduct set forth herein, did refuse, and is refusing, to bargain collectively in good faith with the Union as the exclusive representative of the employees in the unit found appropriate, and has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, we shall order that it take certain affirmative action designed to effectuate the policies of the Act.

We have found that the Respondent has unilaterally repudiated its contracts with the Union and has thereby refused to bargain collectively in good faith with the Union as the exclusive representative of its employees in the appropriate unit and has thereby violated the Act. We shall order the

Respondent to cease and desist from refusing to bargain collectively with the Union by repudiating its contracts with the Union and to give effect to the collective-bargaining agreements which we have found it unlawfully repudiated.

CONCLUSIONS OF LAW

The Respondent has since 15 January 1981 failed and refused to bargain collectively with the Union as the exclusive representative of the employees in the unit described herein in that the Respondent, on and since that date, unilaterally repudiated the 1 November 1978 and 1 November 1979 agreements then in force between it and the Union which covered those employees and the Respondent thereby violated Section 8(a)(1) and (5) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Willis Electric, Inc., Urbana, Ohio, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to bargain collectively with International Brotherhood of Electrical Workers, Local Union No. 669, AFL-CIO, by unilaterally repudiating the 1 November 1978 and 1 November 1979 agreements involving the employees in the following appropriate unit:

All journeymen, wiremen, apprentices and foremen of members of the National Electrical Contractors Association, Western Ohio Chapter, and of the employers who have authorized this Association to bargain for them, engaged in electrical contracting, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

- 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.
- (a) Give full force and effect to the 1 November 1978 and 1 November 1979 collective-bargaining agreements with International Brotherhood of Electrical Workers, Local No. 669, AFL-CIO.
- (b) Post at each of its locations where unit employees work copies of the attached notice marked "Appendix." Copies of the notice, on forms pro-

vided by the Regional Director for Region 8, after being duly signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the proceeding is remanded to the Regional Director for Region 8 for the purposes of arranging a hearing before an administrative law judge to determine whether or not the Respondent withdrew recognition and refused to recognize the Union as the exclusive bargaining representative of its employees in the unit found appropriate herein as alleged in the complaint.

of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively with International Brotherhood of Electrical Workers, Local Union No. 669, AFL-CIO, by unilaterally repudiating the 1 November 1978 and 1 November 1979 collective-bargaining agreements involving employees in the following appropriate unit:

All journeymen, wiremen, apprentices and foremen of members of the National Electrical Contractors Association, Western Ohio Chapter, and of the employers who have authorized this Association to bargain for them, engaged in electrical contracting, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

⁵ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment

WE WILL give full force and effect and to the 1 November 1978 and 1 November 1979 collectivebargaining agreements with International Brotherhood of Electrical Workers, Local Union No. 669, AFL-CIO.

WILLIS ELECTRIC, INC.